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From: SHERRY ESTES  
To: ballotti-douglas, garber-deborah  
Date: 7/9/97 11:20am  
Subject: Skinner

Terry Roundtree and I have a proposition which might have a shot at obtaining an RA consent decree for Skinner, which would permit construction of the remedy during the 1998 construction season. We need your authorization to proceed. (It should be noted that the ADR allocation procedure, for various reasons, already is expected to take longer than the March 1998 date for the final allocation that the program had already determined was unacceptable).

Prior to Terry's assignment to the case, in a meeting with Deb, Jamey Bell and Bruce Sypniewski, we discussed means of expediting remedy construction here, and determined that the carrot of mixed funding might have the best chance of success. I subsequently discussed possibilities with Liz Murphy, and Doug Dixon and Denise Ergener of OECA. Because of the length of lead time associated with a settlement involving pre-authorization of funds and because there are no separate operable units that would lend themselves to a mixed work scenario, we're considering a past cost forgiveness settlement, as part of an RA consent decree, that would go over and above the amounts that would be calculated pursuant to the orphan share policy. **Basically, what I would like is the authority to give up 100% of the agency's past costs.** Dixon and Ergener did not see any conflict with the orphan share policy; we can go beyond the orphan share caps to meet agency enforcement goals, as long as the additional cost forgiveness is characterized as other-than-orphan-share cost forgiveness.

Rough estimates follow: Past costs between \$3.5 to \$4 million. (Awaiting current itemized cost summary). ROD estimated costs= \$9 million. Assume: owner an orphan, 30% owner share (this must be confirmed). Orphan share past cost forgiveness = \$2.25 million (capped at 25% of ROD costs). The additional \$1.25 to \$1.75 million would be offered as a carrot to obtain construction prior to completion of the ADR allocation procedure; the PRPs would be informed that this over-and-above offer will disappear and will not reappear if a consent decree was not concluded by a date certain.

Terry also added a new twist that I thought particularly intriguing. He thinks that up to \$4 million dollars in money previously allocated to other sites, that will not be used by the end of the fiscal year, could be re-allocated to Skinner, to permit construction to go forward--i.e., "up-front \$". **I am not proposing to forgive this amount;** any consent decree would contain the PRP's obligation to re-pay this amount, pursuant to the allocation which they work out in their separate ADR procedure. Essentially, if we try to complete RA negotiations prior to the PRPs' completion of their allocation procedure, we are asking them to trust each other to repay amounts that may be advanced by some parties, and later allocated to other parties. If we reduce the amount of money that they would have to come up with initially from \$9 million to \$5 million, we would have a better chance of success.

To recap, the settlement could contemplate:

- (1) 100% past cost forgiveness
- (2) EPA "fronting" of up to \$4 million, with an obligation to re-pay the \$ fronted.
- (3) PRP construction of the already-approved design.

I would continue to consult with HQ to make sure that I am not undermining national orphan share policy.

Doug B., Terry and I would like to arrange a meeting at your earliest convenience to discuss your thoughts on this proposal or any others, and how you would like to proceed. Please advise.

CC: roundtree-terry, sypniewski-bruce, dixon-douglas, ...

**From:** DENIZ ERGENER  
**To:** RTPMAINHUB:R5CHG:R5ORC.R5ORC1:ESTES-SHERRY  
**Date:** 7/9/97 12:43pm  
**Subject:** Skinner -Reply

Thanks for the info. I think the proposal to "front" \$4 million w/ re-pay provisions would be a nationally significant issue. I am not aware of any case where we have done this. I believe HQs concurrence would be required but I'm not sure we have the legal authority to do this. Let me put in a call to OGC. Also, let's you and Doug and I talk again soon. I'm here the rest of this week and also first half of next week. Thanks.

**CC:** DIXON-DOUGLAS